

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CIVIL SECOND APPEAL NO.140/03

Ganga Ram **Versus** Radheyshyam & Ors.

DATE OF ORDER :: 04/07/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Rajesh Sharma, for appellant
Mr. L.L. Gupta, for respondents

Instant appeal has been filed by defendant-appellant assailing the judgment & decree passed by learned First Appellate Court dated 28th November, 2002.

A suit was filed by plaintiff-non-petitioner Nos.1 & 2 for partition of their 1/4 share of the disputed property in question. Learned trial Judge decided the issue No.1, which is material issue, against plaintiff-non-petitioners vide judgment & decree dated 3rd June, 1995 - against which appeal was preferred by them which was allowed vide judgment & decree dated 28th November, 2002 and the issue No.1 has been decided in their favour and a preliminary decree was passed in regard to 1/4 share to which they became entitled for.

Counsel for appellant has assailed the finding in regard to issue No.1 and submitted that partition of 1/4 share of the property in

question, which the plaintiff-non-petitioners claimed, they failed to show any title and learned First Appellate Court considered it to be a joint Hindu family property and accordingly proceeded to pass preliminary decree holding them entitled over 1/4 share of the property in question and such finding, according to him, is not based on material facts and is perverse which calls for interference.

Counsel for respondents, on the other hand, while supporting the finding of the learned First Appellate Court, particularly, in regard to issue No.1, submitted that even prior to it, joint suit was filed by non-petitioner Nos.1 & 2 along with other co-sharers from whom the present appellant had purchased 3/4 share and document to this effect has been placed on record and the finding recorded by learned First Appellate Court in holding him to be entitled for 1/4 share of property in question, does not call for interference.

This fact could not have been disputed by counsel for appellant that 3/4 share of the property in question was purchased by him through other co-plaintiffs namely; Chothmal & Srinivas, as is evident from Ex.3 copy of the plaint of earlier suit filed by them.

I have gone through the finding recorded by learned First Appellate Court and the question, which the petitioner has raised, particularly, with regard to issue No.1 is based on appreciation of facts and no substantial question of law arises for consideration in the instant appeal.

Consequently, the appeal fails and is hereby dismissed. Record be sent to the learned court below.

[AJAY RASTOGI], J.

FRBOHRA, JR. P. A.